REMARKS

This paper is filed in response to the Office Action mailed on November 24, 2008. No claims are currently amended or cancelled. Claims 1-19 are currently pending. In light of the following remarks, the applicant requests withdrawal of the pending rejections and advancement of this application to allowance.

A. Claim Rejections – Double Patenting

In the Office Action, claims 1-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending application having serial number 09/631,000. The applicant observes that claim 20 of both cases is presently canceled, and assumes that the rejection persists as to currently pending claims 1-19 of this case. The applicant further observes that neither of these applications is yet allowed, and that therefore this provisional rejection should not impede allowance of the claims in the present application if deemed otherwise allowable. M.P.E.P. § 822.

B. Rejection of Claims 1-3 and 6-19 under 35 U.S.C. § 103

Claims 1-3 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,788,669 to Peterson in view of U.S. Patent No. 5,713,856 to Eggers and in view of Official Notice in view of U.S. Patent No. 6,714,969 to Klein and in even further view of U.S. Patent No. 5,658,250 to Blomquist. Claims 7-20 similarly stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson in view of Eggers, in view of Official Notice in view of Blomquist and in view of Klein. Claim 20 was cancelled in a previous Amendment. The applicant respectfully traverses these rejections and does not concede the characterizations of the cited references or the pending application set forth in the Office Action.

1. Pending Claims

Each of independent claims 1, 7, 10, and 16 and their dependent claims recite a combination that comprises individualized, patient-specific data items and that at least some of these data items are batch-downloaded into a medical pump.

2. Cited References

The Office Action acknowledges that Peterson, Eggers, the Official Notice, and Klein do not teach or suggest individualized, patient-specific data items. The Office Action then cites Blomquist and states that it teaches individualized, patient specific data. Office Action at p. 4. The applicant respectfully submits that the Office Action does not set forth a prima facia case of

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obviousness. Furthermore, the references actually teach away from the pending claims. Even if the references did not teach away, combining them still would not result in the combination of elements recited in the claims.

3. Prima Facia Case of Obviousness not Established

Initially, the applicant respectfully submits that the Office Action does not set forth a prima facia case of obviousness. The Office Action merely states Blomquist teaches individualized patient-specific data items and then concludes it would have been obvious to modify the combined teachings of the other references in view of Blomquist. The Office Action does not include any analysis or discussion about why it would be obvious to modify the other cited references in view of Blomquist to batch download individualized, patient-specific data. Therefore, the applicant respectfully submits the Office Action does not set forth a prima facia case of obviousness and request withdrawal of the pending rejection. See M.P.E.P. § 2142 ("rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.") (quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

4. Teaching Away

Eggers and Blomquist both teach away from a claimed combination of batch downloading and individualized, patient-specific data items. Eggers explicitly teaches data such as Rate and Volume to be Infused (VTBI) are entered directly into the pump through interface 102 on the advanced interface unit 100). It does not teach that this data is batch-downloaded or even downloaded from a remote computer. See col. 13, line 50-col. 15, line 62. Although its claims may not be so limited, Blomquist also does not teach that any patient specific data is batch downloaded. In fact, Blomquist teaches the computer system 30 uses prompts for entering a "particular setting," col. 10, lines 15-17, which suggests the computer provides a cue or prompt for each data item and then waits for entry of that item before providing a cue for entry of the next data item. See, e.g., The Computer Desktop Encyclopedia 700 (1996) (prompt is "[a] software message that requests action by the user; for example, 'Enter employee name.'"). The teaching from Eggers and Blomquist both teach away from batch downloading individualized, patient specific parameters.

5. No Combination of References will Result in Claimed Combination of Elements

Even if Eggers and Blomquist do not teach away from the pending claims, combining them with Peterson and the Official Notice still would not result in the claimed combination of elements.

As discussed above, Eggers explicitly distinguished between loading libraries and data such as Rate and VTBI into a pump; a drug library is loaded in a pump with a PCMIA interface or similar data communication interface, while settings such as Rate and VTBI are entered directly and individually into the pump as discussed above. Both references teach individually entering data such as Rate, not batch-downloading such data items. Modifying Eggers in view of Blomquist still would result in individualized, patent-specific parameters being individually entered, not batch downloaded as recited in the pending claims.

Combining Peterson with Blomquist would have the same result. Peterson is silent on downloading patient-specific parameters and combining it with the teachings of Blomquist would result in individually entering patient-specific parameters through prompts, not batch downloading patient-specific parameters.

Therefore, the applicant respectfully submits claims 1-3 and 6-19 are not obvious over the cited references for at least the foregoing reasons and requests withdrawal of the pending rejection.

C. *Claims 4 and 5*

Claims 4 and 5 stand rejected as being obvious under 35 U.S.C. § 103(a) over Peterson in view of Eggers in view of Official Notice in view of Klein in view of Blomquist as applied to claim 3 above, and in further view of "Acute Health Solutions." The applicant respectfully traverses this rejection and does not concede the characterizations of the cited references or the pending application set forth in the office action.

Claims 4 and 5 depend from claim 1 and also include a combination that comprises individualized, patient-specific data items and that at least some of these data items are batch-downloaded into a medical pump. As discussed above, Peterson, Eggers, Official Notice, Klein, and Blomquist all fail to teach a combination that includes these claim elements. Acute Health Solutions also fails to teach or suggest these claim elements.

Therefore, no combination of the cited references or official notice will result in the claimed combination of elements and the applicant respectfully requests reconsideration and withdrawal of the pending rejection of claims 4 and 5.

D. Claim 18

In the Office Action, claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson in view of Eggers, in view of Official Notice, and in view of Klein in view of Blomquist as applied to claim 17 above, and in further view of "Acute Health Solutions."

Claim 18 depends from claim 16 and also includes a combination that comprises individualized, patient-specific data items and that at least some of these data items are batch-downloaded into a medical pump. As discussed above, Peterson, Eggers, Official Notice, Klein, and Blomquist all fail to teach a combination that includes these claim elements. Acute Health Solutions also fails to teach or suggest these claim elements.

Therefore, no combination of the cited references or official notice will result in the claimed combination of elements and the applicant respectfully requests reconsideration and withdrawal of the pending rejection of claim 18.
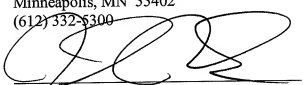
CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests withdrawal of the pending rejection and advancement of this application to issuance. The applicant also notes that there may be additional reasons that the claimed invention is patentably distinct form the cited references in addition to those raised in the above remarks. The applicant reserves the right to raise any such reason in the future.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact the undersigned attorney at (612) 336-4608.

Respectfully submitted,

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